BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Promote Policy and Program Coordination and Integration in Electric Utility Resource Planning.	Rulemaking 04-04-003 (Filed April 1, 2004)
Order Instituting Rulemaking to Promote Consistency in Methodology and Input Assumptions in Commission Applications of Short-run and Long-run Avoided Costs, Including Pricing for Qualifying Facilities.	Rulemaking 04-04-025 (Filed April 22, 2004)

REPLY COMMENTS OF THE CALIFORNIA COGENERATION COUNCIL ON THE ALTERNATE PROPOSED DECISION OF COMMISSIONER GRUENEICH

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INTRODUCTION

Pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure, the California Cogeneration Council ("CCC") hereby submits this reply to the opening comments on the Alternate Proposed Decision of Commissioner Grueneich ("Alternate PD").

DISCUSSION

I. The Commission Should Not Increase The Weight Given NP-15 and SP-15 Market Prices In The Market Index Formula To Ninety Percent.

In opening comments, the CCC supported the Alternate PD's proposal to blend heat rates derived from NP-15 and SP-15 forward market prices with previously adopted administrative heat rates. The CCC also explained why the 50/50 blend in the Alternate PD over-emphasized NP-15 and SP-15 market clearing prices, and proposed that the appropriate blend would use these prices for no more than one-third of the SRAC formula.[1] Not surprising, PG&E and TURN assert that the Alternate PD's 50/50 blend under-values NP-15 and SP-15 prices.[2] Somewhat surprising, they propose that, if there is to be any blend at all, the implied NP-15 and SP-15 heat rates should account for 90 percent of the SRAC formula.

First, neither PG&E nor TURN cite any evidence in the record that supports their proposed 90/10 blend. The only thing supporting their proposal is that the 90/10 blend yields an outcome that is closer to their litigation position, which the Alternate PD rejects.[3] The CCC, by contrast, showed that relying on NP-15 and SP-15 market clearing prices for no more than 33% yields SRAC values that are both supported by the record and are significantly lower than the CCC's litigation position.[4]

Second, in light of all of the problems correctly identified in the Alternate PD with relying on NP-15 and SP-15 market clearing prices for SRAC values, it defies logic to support an approach that would increase the use of these prices to 90 percent of the SRAC formula. Such a weighting would, for practical purposes, be the same as the 100% weighting originally proposed by PG&E and TURN.

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[1] CCC Comments at 5-7.

[2] PG&E Comments at 8; TURN Comments at 2-3.

[3] Alternate PD at 61-64.

[4] CCC Comments at 6.

Finally, it would have been easy for the CCC to have proposed the use of administrative heat rates for 90% or more of the SRAC formula; after all, NP-15 and SP-15 prices account for less than 5% of the utilities' portfolios. However, attempting to look at the record objectively, the CCC proposed a reasonable alternative to the Alternate PD's apparent "split the baby approach."[5] Just as the utilities and TURN have offered a litigation position in this proceeding that would yield SRAC values that are far from any reasonable measure of the utilities' actual avoided costs, they now offer a "compromise" that shows no movement toward rationality at all. The only way for the Commission to properly implement the SRAC formula is to reject the utility and TURN position.

II. PG&E's Use Of The IEP Settlement Is Inappropriate And Should Be Ignored.

Much of PG&E's comments consist of comparing the Alternate PD and the SRAC values in its April, 2007 settlement with IEP ("IEP Settlement"). PG&E attempts to support its demand for lower SRAC values than those contained in the IEP Settlement with an argument that to issue a decision with higher values would penalize the settling parties and undermine the Commission's settlement process.[6] This material is inappropriate and should be ignored.

First, in adopting the IEP Settlement, the Commission expressly stated that the settlement "is not precedential," "will not prejudice [its] future decision-making" and that "[t]he record developed in this proceeding will be the cornerstone of the final decision for non-settling parties not the Settlement Agreements."[7] PG&E's arguments ask the Commission to ignore these commitments.[8]

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[5] Remember that in the original parable that coined the phrase "split the baby," the 50/50 compromise was viewed as a complete failure for both parties (even though only recognized as such by one party). Fortunately, unlike the prospect of dividing a baby between two claiming mothers, the Commission can, and should, come to an appropriate allocation of heat rate values for the SRAC formula.

[6] PG&E Comments at 4, 6-7.

[7] D.06-07-032, at 13 (citation omitted). Note also that the IEP Settlement itself, in Section 14, states that the settlement "represents a compromise of respective litigation positions and is not intended to establish binding precedent for any future proceeding."

[8] These Commission statements came in direct response to the CCC's concern that PG&E would attempt to apply the negotiated compromise to all QFs even though, as discussed below, the IEP Settlement has many unique features that render it not generally applicable. Id. at 12. Obviously the CCC's concern about PG&E's intention has proven correct.

Second, although PG&E tries to paint the IEP Settlement as broadly acceptable to QFs by pointing out that 120 QFs signed on,[9] PG&E fails to disclose that only 14 cogenerators out of 81 adopted the IEP Settlement.[10] The remaining 106 QFs that signed on are renewables that selected a fixed, five year energy price and do not operate on a gas-based heat rate. PG&E also fails to disclose that 12 of the 14 cogenerators that signed on settled their exposure to substantial "PX-Switcher" liability under claims made by PG&E, and supported by TURN and DRA, in R.99-11-022.[11]

Third, PG&E's attempt to downplay the unique nature of the IEP Settlement to the parties that settled their PX Switcher liability (claiming that IEP always asserted that the refund claims from R.99-11-022 settled in the IEP Settlement were without merit[12]) is ridiculous. Just because IEP claimed in litigation that PG&E's arguments were without merit does not mean that the QFs that adopted the IEP Settlement failed to attribute litigation risk to PG&E's meritless claims.

Fourth, PG&E's claim that the heat rates in the IEP Settlement are substantially below those in the Alternate PD is disingenuous. The IEP Settlement contains revised TOU factors that permitted cogenerators to obtain a heat rate as high as 10,440 Btu/kWh if they are able to run during the peak and cycle-off during the off-peak periods.[13] This is far in excess of the heat rate reflected in CCC's litigation proposal, let alone in the one-third/two-third proposal in CCC's comments on the Alternate PD.[14] It is no surprise that nearly all of the cogenerators that opted for the IEP Settlement can cycle.[15]

Finally, PG&E's argument that the Commission should not adopt an outcome for QFs that is more favorable than that in the IEP Settlement because to do so would punish those that settled and undermine the Commission's settlement policies must be rejected. One, if this position were accepted,

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[9] PG&E Comments at 4.

[10] See Comments of the California Cogeneration Council in Opposition to the IEP Settlement, June 1, 2006, at 8.

[11] Id. In R.99-11-022, PG&E, supported by DRA and TURN, was claiming refunds of hundreds of millions of dollars from QFs that switched to PX based SRAC prices pursuant to PU Code Section 390(c).

[12] PG&E Comments at 7.

[13] Id. at 7.

[14] The CCC's litigation proposal for PG&E was a heat rate of 9,620 Btu/kWh and its proposal in response to the Alternate PD yielded a PG&E heat rate of 9,145. See CCC Comments on Alternate PD at 6.

[15] See Comments of the California Cogeneration Council in Opposition to the IEP Settlement, June 1, 2006, at 8.

the Commission's commitment that the IEP Settlement would "not prejudice [its] future decision-making" would be rendered meaningless. Two, the QFs that opted for the IEP Settlement will not be punished, as they knew that they were foregoing the chance of a more favorable litigation outcome and protected themselves from a less favorable outcome.[16] Three, if PG&E's logic were adopted, litigation before the Commission would turn into a search for the party willing to settle for the lowest value; once that settlement is reached, no party could refuse to sign on as that low-ball settlement would establish a ceiling for the litigation outcome. Clearly, this would be both unfair and bad policy.

III. The Commission Should Base The NP-15 / SP-15 Based Heat Rate Component On A Rolling Average Of 12 Months Of Forward Prices.

A number of parties expressed concern with the Alternate PD's proposal to base the NP-15/SP-15 portion of the SRAC heat rate formula on a rolling 24 month average of forward electricity prices.[17] Most of these parties indicated that using 12 months of forward electricity prices would be preferable.[18] SDG&E suggested that the Commission lock-in an implied heat rate for a given calendar year based upon samples of forward prices for that year taken during the months of October, November and December of the prior year (one sample would be taken each week during the three month sampling window).[19] IEP proposed to use a rolling average of 12 month forward prices.[20]

The CCC proposes a simple combination of the SDG&E and IEP approaches. In particular, the Commission should, for each month ("Heat Rate Month"), use the average of the forward market heat rates for transactions occurring in the 12 months beginning with the Heat Rate Month that are derived from indices published each Wednesday[21] of the three months prior to the Heat Rate Month. For example, to determine the heat rate for January 2008, the utilities would average the forward

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[16] If anything, cogenerators that could not accept the IEP Settlement, whether because they could not cycle, had no PX Switcher liability or needed a contract renewal (the rights to which were waived in the IEP Settlement), would be punished.

[17] SDG&E Comments at 3-8; SCE Comments at 7-9; IEP Comments at 3-4; PG&E Comments at 8.

[18] SDG&E Comments at 7-8; IEP Comments at 3-4; SCE Comments at 7 (indicating that twelve month forward prices are more likely to reflect actual transactions than later forward prices).

[19] SDG&E Comments at 7-8.

[20] IEP Comments at 3-4.

[21] Wednesday is chosen to avoid potential anomalies occurring with Monday and Friday price quotes. Tuesday and Thursday price quotes would serve equally well.

market prices for transactions occurring each month between January and December of 2008, as published on each Wednesday of October, November and December of 2007. For February 2008, the utilities would average the forward market prices for transactions occurring each month between February 2008 and January 2009, as published on each Wednesday of November and December of 2007 and January of 2008. This would result in a monthly calculation using a robust 144 data points (assuming four Wednesdays per month) that is updated monthly to reflect current market conditions.

IV. SCE's Arguments In Support Of A Retroactive Application Of The New SRAC Pricing Formula Should Be Rejected.

The CCC endorses the reply comments of the California Wind Energy Association in opposition to SCE's proposal for a retroactive application of the new SRAC methodology.

V. TURN's Proposed Limit For Expiring Contracts Should Be Clarified.

The CCC endorses the reply comments of the California Wind Energy Association in seeking to clarify TURN's proposed 12 month limit on the availability of new QF contracts.

Respectfully submitted,

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I hereby certify that I have this day served a copy of the

Reply Comments of the California Cogeneration Council on the Alternate Proposed Decision of Commissioner Grueneich

on all known parties to R.04-04-003 and R.04-04-025 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on September 17, 2007, at San Francisco, California.

Marcus Russo

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